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Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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Prosecution for bigamy cannot be based upon a common law marriage, since such a marriage cannot be established where some impediment exists. *Op. Atty. Gen.*, (133B-10), Sept. 21, 1939.

8565. By whom solemnized.

A licensed minister may solemnize a marriage, though not ordained. *Op. Atty. Gen.* (300c), Aug. 21, 1940.

CHAPTER 71

Divorce

8580. What marriages void.

Marriage by person committed as a feeble-minded person to the guardianship of the state board of control was not void under §8580, but was voidable under §8581. *Op. Atty. Gen.*, (679k), Sept. 22, 1939.

8581. What voidable.

Marriage by person committed as a feeble-minded person to the guardianship of the state board of control was not void under §8580 but was voidable under §8581. *Op. Atty. Gen.*, (679k), Sept. 22, 1939.

A marriage may be annulled for want of age or for fraud, provided there is no subsequent voluntary cohabitation of parties, and whether there is fraud or subsequent voluntary cohabitation is a factual matter. *Op. Atty. Gen.* (300B), March 12, 1940.

8585. Grounds for divorce.—A divorce from the bonds of matrimony may be adjudged by the district court for any of the following causes:

1. Adultery.
2. Impotency.
3. Cruel and inhuman treatment.
4. Sentence to imprisonment in any state or United States prison or any state or United States reformatory subsequent to the marriage; and in such case a pardon shall not restore the conjugal rights.
5. Wilful desertion for one year next preceding the commencement of the action.
6. Habitual drunkenness for one year immediately preceding the commencement of the action.
7. Incurable insanity, provided that no divorce shall be granted upon this ground unless the insane party shall have been under regular treatment for insanity, and because thereof, confined in an institution for a period of at least five years immediately preceding the commencement of the action. In granting a divorce upon this ground, notice of the pendency of the action shall be served in such manner as the court may direct, upon the nearest blood relative and guardian of such insane person, and the superintendent of the institution in which he is confined. Such relative or guardian and superintendent of the institution shall be entitled to appear and be heard upon any and all issues.

The status of the parties as to the support and maintenance of the insane person shall not be altered in any way by the granting of the divorce.

8. Continuous separation under decree of limited divorce for more than five years next preceding the commencement of the action, and continuous separation under an order or decree of separate maintenance for a period of two years immediately preceding the commencement of the action. (As amended Act Apr. 24, 1941, c. 406, §1.)

½. In general.

In action to procure a divorce trial court determines credibility of the witnesses and weight to be given their testimony and can conclude that testimony is product of imagination and exaggeration rather than a recital of what actually took place. *Rhoads v. R.*, 292NW760. See *Dun. Dig.* 2796.

Mere temperamental differences and nervousness of a woman do not require separate maintenance and custody of a child. *Rhoads v. R.*, 292NW760. See *Dun. Dig.* 2778.

It is unnecessary that the plaintiff be corroborated as to each item of evidence, being sufficient if evidence tends in some degree to confirm allegations replied upon for a divorce. *Locksted v. L.*, 295NW402. See notes under §9905. See *Dun. Dig.* 2795.

3. Cruel and inhuman treatment.

In action for divorce on ground of cruel and inhuman treatment, court might well have permitted testimony as to disposition and temper elements of defendant, but it was not reversible error to exclude where relationship of parties over a long period of time was dwelt upon at length. *Locksted v. L.*, 295NW402. See *Dun. Dig.* 2778.

Evidence held to sustain finding of cruel and inhuman treatment of wife. *Id.*

A wife beaten, hit, and choked by husband for 28 years was entitled to divorce though she at times fought back. *Id.*

In action for divorce for cruel and inhuman treatment for 28 years, plaintiff's failure to call as a witness her daughter was merely a factor to be considered. *Id.* See *Dun. Dig.* 2795.

5. Desertion.

Wilful desertion is voluntary separation of one of married parties from other or voluntary refusal to renew a suspended cohabitation without justification either in consent or wrongful conduct of other. *Lewis v. L.*, 289NW60. See *Dun. Dig.* 2776.

Rejection of an offer to return home, made by a husband who had previously left the marital domicile, does not constitute desertion when the offer was made during the pendency of a prior divorce action. *Id.* See *Dun. Dig.* 2776.

Separation by mutual consent is not grounds for divorce. *Id.* See *Dun. Dig.* 2776.

The refusal of a party to a marriage contract to restore a repentant spouse who had previously left the home constitutes desertion if, but only if, the latter attempts in good faith to effect a reconciliation. *Id.* See *Dun. Dig.* 2776.

Desertion as a ground for divorce cannot be predicated on a separation under an order or judgment of the court which authorizes or sanctions the same. *Bliss v. B.*, 293NW94. See *Dun. Dig.* 2776.

8. Continuous separation under decree.

It is doubtful if statute applies where one is living apart under a decree for separate maintenance and not a decree of limited divorce. *Bliss v. B.*, 293NW94. See *Dun. Dig.* 2776.

8588. Action—How and where brought—Venue.

District court has power to punish as for contempt wrongful refusal of a husband to pay an allowance ordered for benefit of his wife in an action for separate maintenance. *Syblirud v. S.*, 291NW607. See *Dun. Dig.* 1703(40).

Reopening of divorce case for taking of additional testimony or to order a new trial is a matter primarily for trial court. *Locksted v. L.*, 295NW402. See *Dun. Dig.* 2799b.

8593. Alimony pending suit.

Plaintiff on appeal from a judgment denying a divorce was allowed attorney's fees and disbursements, though she was unsuccessful, where appeal appeared to be made in good faith and upon reasonable grounds. *Rhoads v. R.*, 292NW760. See *Dun. Dig.* 2804.

Where divorced woman's appeal from partial denial of motion for modification of divorce decree was without merit, she was allowed no attorneys' fees. *Coddon v. Coddon*, 295NW74. See *Dun. Dig.* 2804.

Attorney's fees of \$600 were excessive, but were allowed to stand to include appeal of case. *Locksted v. L.*, 295NW402. See *Dun. Dig.* 2804.

Temporary alimony must be paid without delay. *Id.* See *Dun. Dig.* 2802.

8596. Custody of children.

Where decree of divorce is silent with respect to support of a child, divorced mother has cause of action against divorced father quasi ex contractu for support furnished child arising out of natural and legal duty of father. *Quist v. Q.*, 290NW561. See *Dun. Dig.* 2800.

Duty of supporting a child rests primarily on the father, even after divorce of parents. *Id.* See *Dun. Dig.* 2800.

A divorced wife who has been awarded custody of a child cannot enforce accrued instalments of obligation to support child as provided for in decree when she has intentionally violated its provisions by taking child outside territorial limits of court's jurisdiction. *Anderson v. A.*, 291NW508. See *Dun. Dig.* 2800.

Disposition of custody of children in a divorce case made by trial court will not be reversed upon appeal except for abuse of broad discretion with which court is invested. *Locksted v. L.*, 295NW402. See *Dun. Dig.* 2800.

8602. Property of husband—Permanent alimony.

The allowance of attorneys' fees and other expenses in divorce proceedings is largely a matter of discretion with trial court, and it is established policy of supreme court to be conservative in matter of such allowances and they are to be allowed cautiously and only when necessary. *Burke v. B.*, 292NW426. See *Dun. Dig.* 2804.

An award of alimony to a 30-year old woman of \$125.00 a month for thirty months was modified to do away with the time limitation. *Id.*

Finding of trial court in divorce case that certain realty of defendant might be worth as much as \$12000 above encumbrances, was not to be commended when highest figure given, and by plaintiff, was \$11500, but was not prejudicial with respect to finding by court that plaintiff was entitled to permanent alimony of \$2825, a matter well within discretion of court. *Locksted v. L.*, 295NW402. See Dun. Dig. 2803.

Permanent alimony of \$2825 with a lien on a farm was modified so as to require payment in installments of \$60 a month. *Id.*

8603. Order for alimony, etc., revised.

To warrant a modification of an allowance fixed by a divorce decree there must be proof of such substantial change in situation of parties from that in which they were when decree was rendered as to justify a modification. *Quist v. Q.*, 290NW561. See Dun. Dig. 2805.

Power of court to revise or alter a decree for alimony is very broad. *Burke v. B.*, 292NW426. See Dun. Dig. 2805.

Inheritance received by woman obtaining divorce and reduction of defendant's professional and non-professional income held not to justify interference with order fixing alimony. *Horeish v. H.*, 295NW53. See Dun. Dig. 2805.

Where husband sued wife for absolute divorce and custody of two children, boys 16 and 10 years old, and defendant defaulted but signed a stipulation that plaintiff have custody of children and that she receive \$60 a month alimony for 2 years, and decree followed stipulation, court did not abuse its discretion on defendant's motion for modification in denying change of custody

and increasing alimony to 3 years instead of two. *Coddon v. C.*, 295NW74. See Dun. Dig. 2805.

8604. Security—Sequestration—Contempt.

A divorced husband charged with contempt for disobedience in failing to pay alimony allowed to the wife by the judgment of divorce may excuse the disobedience by showing his inability to obey; but the burden of showing such fact is on him. *Ekblad v. E.*, 291NW511. See Dun. Dig. 1703(40).

District court has power to punish as for contempt wrongful refusal of a husband to pay an allowance ordered for benefit of his wife in an action for separate maintenance. *Syblirud v. S.*, 291NW607. See Dun. Dig. 1703(40).

Inability to pay is a good defense. *Id.* See Dun. Dig. 1703(40).

LIMITED DIVORCES

8608. Separation. [Repealed.]

Equitable power of court to grant separate maintenance was not abolished by L. 1933, c. 165, abolishing limited divorces. *Bliss v. B.*, 293NW94. See Dun. Dig. 2798.

8613. As to alimony and wife's property. [Repealed.]

Allowance of separate maintenance in the sum of \$120 a month to wife living in family home and burden of keeping place insured and taxes paid held not excessive where husband was a physician and surgeon in a small community with a gross annual income of \$8,000, though he was spending \$2,000 to \$2,500 a year for maintenance and education of two minor daughters. *Syblirud v. S.*, 291NW606. See Dun. Dig. 2803.

CHAPTER 72

Married Women

8621. Contracts between husband and wife.

Conveyances of real property prior to December 29, 1926, by married man to his wife, declared legal and valid. *Laws 1941, c. 343.*

CHAPTER 73

Adoption and Change of Name

8626. Consent, when necessary.

If mother is of sufficient age and discretion to fully realize consequences of her consent, fact that she is a minor and is unmarried would not incapacitate her, nor render consent unnecessary. *Op. Atty. Gen.*, (840B-2), April 11, 1940.

8628. Notice of hearing.—When the parents of any minor child are dead or have abandoned him, and he has no guardian in the state, the court shall order three weeks' published notice of the hearing on such petition to be given; the last publication to be at least ten days before the time set therefor. In every such case the court shall cause such further notice to be given to the known kindred of the child as shall appear to be just and practicable; provided that if there be no duly appointed guardian, a parent who has lost custody of a child through divorce proceedings, and the father of an illegitimate child who has acknowledged his paternity in writing or against whom paternity has been duly adjudged shall be served with notice in such manner as the court shall direct in all cases where the residence is known or can be ascertained. (As amended Apr. 9, 1941, c. 151, §1.)

8629. Decree—Change of name.

Judgment of adoption, though entered after death of one of adoptive parents could not be collaterally attacked. *Op. Atty. Gen.*, (840B), March 12, 1940.

8630. Status of adopted child.

Where property is given in trust to pay income to a beneficiary for life with remainder to "lawful issue" of life beneficiary, gift in remainder is to a class, which, absent context or circumstances to show a contrary intention, includes adopted children. *Holden's Trust*, 291NW104. See Dun. Dig. 2722a.

Where alleged adopted father made provision in his will for "my foster daughter", having been prepared by a competent lawyer of long experience, technical words

"foster daughter" will be presumed to have been used in that sense. *Norman's Estate*, 295NW63. See Dun. Dig. 2722d.

Section applies to all adopted children, whether adopted prior or subsequent to its passage. *Id.*

Absent adoption pursuant to statute, a child received into home of foster parents and by them reared as their natural child is allowed to share in estate of foster parents only when a contract to adopt or to give it a share in such estate is clearly proved. *Id.*

An oral contract to adopt must be established by proof that is clear, cogent and convincing. *Id.* See Dun. Dig. 99a.

There being no contract to adopt, there can be no estoppel against asserting its non-existence. *Id.* See Dun. Dig. 99a, 2722d.

8634. Order—Filing copies—County auditor.—If it shall appear to the court to be proper, it shall grant the application, and shall set forth in the order a description of the lands, if any, in which the applicant claims to have an interest. The clerk shall file such order, and record the same in the judgment book. If lands be described therein, a certified copy of the order shall be filed for record, by the clerk, with the Register of Deeds of each county wherein any of the same are situated. Provided that before doing so he shall present the same to the county auditor, who shall enter the change of name in his official records and shall note upon the instrument, over his official signature, the words change of name recorded. Any such order shall not be filed, nor any certified copy thereof be issued, until the applicant shall have paid to the clerk the cost of such record. The fees of the clerk shall be two dollars, and for each certified copy of the order fifty cents. (As amended Act Apr. 10, 1941, c. 178, §1.)

Act Apr. 28, 1941, c. 540, §1, validates final decrees of adoption heretofore entered pursuant to sections 8624 to 8634, inclusive.